

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Farmworkers Educational Radio Network, Inc.	)	File Number: EB-05-SD-072
	)	
Licensee of Station KCEC-FM	)	NAL/Acct. No.: 200532940003
Wellton, Arizona	)	FRN: 0010057685
Facility ID #21207	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 28, 2007

**Released:** March 2, 2007

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 1.106 of the Commission’s Rules (“Rules”),<sup>2</sup> we deny a Petition for Reconsideration (“*Petition*”) filed on July 31, 2006, by Farmworkers Educational Radio Network, Inc. (“Farmworkers”),<sup>3</sup> licensee of KCEC-FM, of a *Forfeiture Order*<sup>4</sup> imposing an eight thousand dollar (\$8,000) monetary forfeiture penalty against Farmworkers for repeated violation of Section 11.35 of the Rules.<sup>5</sup> The noted violation involves Farmworkers’ failure to ensure the operational readiness of KCEC-FM’s emergency alert system (“EAS”) equipment. For the reasons discussed below, we affirm the *Forfeiture Order*.

**II. BACKGROUND**

2. On April 8, 2005, an agent from the Commission’s San Diego Office conducted an inspection at the main studio of KCEC-FM located at 670 E. 32<sup>nd</sup> Street, Suite 12A, Yuma, Arizona. Although EAS equipment was installed, the agent found that it was not operational at the time of inspection. It was subsequently determined, and conceded by Farmworkers, that the EAS receiver was not plugged in. Initially, during the inspection, the agent determined that no audio from the EAS receiver for the designated first and second local primary stations (“LP-1” and “LP-2”) could be heard. At the request of the agent, the designated LP-1 and LP-2 stations ran a required weekly test (“RWT”) during this inspection and the station’s EAS equipment did not detect the activation. A review of the EAS log and printouts generated by the EAS encoder/decoder indicated that from January 2004 through April 2005, only four monthly tests (“RMT”) were received from the local primary stations and none of these

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<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> We note that the FCC authorization for KCEC-FM lists the licensee as Farmworkers Educational Radio Network, Inc., as opposed to Farmworker Educational Radio Network, Inc. We therefore use the name of the licensee as stated on the authorization in the caption and throughout this *Memorandum Opinion and Order*.

<sup>4</sup> *Farmworkers Educational Radio Network, Inc.*, 21 FCC Rcd 6959 (EB 2006) (“*Forfeiture Order*”).

<sup>5</sup> 47 C.F.R. § 11.35.

tests were retransmitted. EAS logs also indicated that numerous RWTs were not transmitted by KCEC-FM and numerous RWTs were not received from either designated LP-1 or LP-2 stations during this same period. No entries were made by KCEC-FM staff in the EAS log to identify the causes of these failures or what steps were taken to remedy any failures.

3. On April 22, 2005, the San Diego agent spoke with KCEC-FM's Chief Engineer. The Chief Engineer acknowledged that problems were found with the EAS equipment during the engineer's inspection of the station's EAS equipment on April 9, 2005. Specifically, he indicated that the EAS equipment was originally set for the automatic mode to receive and to forward the information received for the tests from the local primary stations. However, the EAS equipment was switched to the manual mode, requiring a staff person to manually resend the RMT. Also, the Chief Engineer indicated that the EAS receiver was not connected properly to a power source which explained why the tests sent by the LP-1 and LP-2 had not been received by KCEC-FM.

4. On July 20, 2005, the Enforcement Bureau's San Diego Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$8,000 to Farmworkers, finding that Farmworkers apparently repeatedly failed to ensure the operational readiness of the KCEC-FM EAS equipment.<sup>6</sup> Farmworkers filed a response to the NAL on August 22, 2005 ("Response"). In its *Response*, Farmworkers argued that the San Diego agent found overall compliance with the Commission's Rules, and that the only violations discovered concerned the EAS equipment and logging. While Farmworkers acknowledged lapses in the station's EAS monitoring and logging, it contended that KCEC-FM made a conscientious effort to comply with the EAS Rules; that the EAS transmission equipment was at all times fully operational; that the station had most of the required logging slips; and that if someone had not "jostled loose" the plug on the EAS receiver, the station would have been in full compliance. Farmworkers also argued that the violation was minor, that KCEC-FM had an overall history of compliance with the Rules, and that it was entitled to a reduction based on its good faith and its voluntary disclosure of the facts and circumstances in this case.

5. On June 29, 2006, after reviewing Farmworkers' *Response*, the Western Region, Enforcement Bureau, released the *Forfeiture Order*, and imposed a \$8,000 forfeiture on Farmworkers for its repeated violation of Section 11.35 of the Rules. In the *Forfeiture Order*, the Western Region found that KCEC-FM EAS equipment was not fully operational at all times and that no-one at the station had noticed the equipment failure caused by the "jostled loose" equipment plug until the San Diego agent's discovery of the failure during the inspection. The Western Region also found that KCEC-FM did not have most of its required logging slips, and that the violation was not minor because the failure of the receiver resulted in a failure of the KCEC-FM EAS system. In addition, the Western Region determined that Farmworkers was not entitled to a reduction in the forfeiture amount because Farmworkers did not have an overall history of compliance with the Commission's Rules, that Farmworkers did not meet the requirements for a good faith reduction, and that Farmworkers staff did not make voluntary disclosures to the Commission prior to the inspection by the San Diego Office.

### III. DISCUSSION

6. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>7</sup> A petition for reconsideration that reiterates arguments

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<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940003 (Enf. Bur., Western Region, San Diego Office, released July 20, 2005).

<sup>7</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

that were previously considered and rejected will be denied.<sup>8</sup> Farmworkers raises four arguments in its *Petition*, which we address in turn.

7. In its first argument, Farmworkers alleges that the Western Region erred in assessing the “maximum forfeiture” of \$8,000 for what was “clearly a mistake.” Farmworkers argues that the *Forfeiture Order* cites to its logging violations and states that Section 1.80 of the Rules requires only a \$1,000 forfeiture amount for logging violations. We disagree. Section 1.80 of the Rules lists \$8,000 as the base, and not the maximum, forfeiture for “EAS equipment not installed or operational.”<sup>9</sup> As the Western Region determined in the *Forfeiture Order*, Farmworkers failed to produce “evidence to refute the San Diego Office’s finding that no audio from the RWTs transmitted by the LP-1 and LP-2, at the request of the San Diego agent, could be heard from the station’s EAS receiver. Farmworkers, and the Chief Engineer, acknowledge that the EAS receiver was not plugged in, and the Chief Engineer acknowledges that only after he restored power to the EAS receiver did the lights indicating audio on the receiver’s front panel as well as on the encoder/decoder light up.”<sup>10</sup> We agree with the Western Region that in this scenario, Farmworkers failed to ensure the operational readiness of the KCEC-FM EAS equipment and that the appropriate base forfeiture amount is \$8,000. We also find that the Western Region’s reliance on the review of EAS equipment logs and printouts is appropriate as an element of its consideration of a violation of Section 11.35.

8. Farmworkers also argues that the assessment of \$8,000 for this violation is inapposite to an Enforcement Bureau order, *Palmetto Broadcasting Company, Inc.* (“*Palmetto*”),<sup>11</sup> in which “the licensee [had] no records or tests or activations of the station’s EAS system [and] no reasons for the failure to receive and conduct such tests nor entries showing EAS equipment had been removed from service for repair. Further the station’s general manager stated he could not remember when the station had last conducted a test. The Chief of the Enforcement Bureau, however, cancelled a portion of the amount of the proposed forfeiture with no adverse action whatsoever.”<sup>12</sup> We have reviewed the *Palmetto* case, in which the Enforcement Bureau cancelled a forfeiture assessed to Palmetto for violating Section 11.61 of the Rules, concerning the requirement that broadcast stations conduct monthly EAS tests.<sup>13</sup> Contrary to the description of the *Palmetto* case by Farmworkers in its *Petition*, the Section 11.61 forfeiture was cancelled because Palmetto produced a sworn statement from the station’s general manager stating that it did monitor and conduct weekly and monthly tests as of the date of the inspection and for at least three months immediately prior. Thus the original finding of a willful and repeated violation of the Commission’s logging requirement was no longer supported by the available evidence. In the present case, Farmworkers produced no such evidence to refute the findings of the San Diego Office, relative to Farmworkers’ failure to receive and transmit RWTs and RMTs and its failure to have the EAS equipment plugged in, as stated in the *Forfeiture Order*.

9. In its second argument, Farmworkers alleges that the Western Region rejected its request for a downward reduction of the forfeiture amount because KCEC-FM has an overall history of compliance with the Commission’s Rules. When considering an overall history of compliance claim, the Commission considers all the past violations of the licensee, not just those concerning one station, and

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<sup>8</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>9</sup> 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4).

<sup>10</sup> *Forfeiture Order* at para. 9.

<sup>11</sup> *Palmetto Broadcasting Company, Inc.*, 19 FCC Rcd 17718 (EB 2004).

<sup>12</sup> *Petition* at 3.

<sup>13</sup> 47 C.F.R. § 11.61.

will also impute findings of violations against parent, sister or commonly controlled companies, to the licensee.<sup>14</sup> In this case, we find that the Western Region correctly considered a recent forfeiture order issued against Farmworkers' station KRIT, while considering Farmworkers' request for a reduction based on an overall history of compliance.<sup>15</sup> We therefore find no merit to this argument.

10. In its third argument, Farmworkers argues that the Western Region erred in determining that the downward adjustment for a minor violation did not apply because, according to Farmworkers, the national EAS has never been activated and that a major violation would be not having EAS equipment. Farmworkers then argues that under the Western Region's interpretation, any violation of the Rules would always be a major violation. While the Commission will reduce a forfeiture amount if a violation is relatively minor, within the particular category of violation,<sup>16</sup> we find that the Western Region correctly determined that Farmworkers' violation of Section 11.35 was not minor. Contrary to Farmworkers' assertions, Section 11.35 does not merely require that licensees obtain EAS equipment, nor does Section 11.35 require that licensees only obtain and install EAS equipment. Section 11.35(a) specifically requires licensees to "ensure[] that EAS encoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation."<sup>17</sup> As the Western Region correctly determined, those functions were not available at the time of the San Diego agent's inspection of the KCEC-FM EAS equipment because it was unplugged, and, according to the KCEC-FM EAS printouts and logs, those functions were consistently unavailable for several months prior to the inspection.

11. In its final argument, Farmworkers argues that the Western Region erred in not taking into account Farmworkers' good faith efforts to comply with the Rules and the San Diego agent, by concentrating solely on the fact that Farmworkers did not voluntarily disclose its EAS violation to the San Diego agent. We disagree. We find that the Western Region considered Farmworkers' good faith and voluntary disclosure arguments and rejected each one, individually. The Western Region specifically considered Farmworkers' argument concerning its good faith efforts and stated that "[a] good faith reduction is permissible when a licensee notices a violation and attempts to remedy it before the Commission conducts its inspection, or, it provides evidence of an established compliance program in place, prior to the Commission's involvement. Farmworkers meets neither standard."<sup>18</sup> We therefore find no merit to this argument.

12. We have considered the arguments raised by Farmworkers in its *Petition* and find that none of them persuades us to reduce or cancel the forfeiture. We, therefore, deny the *Petition*.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>19</sup> and Section 1.106 of the Commission's Rules,<sup>20</sup> Farmworkers Educational

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<sup>14</sup> See, e.g., *Petracom of Texarkana, L.L.C.*, 19 FCC Rcd 8096 (EB 2004).

<sup>15</sup> See *Farmworker Educational Radio Network – Licensee of FM Station KRIT*, 20 FCC Rcd 14294 (EB 2005). We note that Farmworkers has paid this forfeiture.

<sup>16</sup> *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

<sup>17</sup> 47 C.F.R. § 11.35(a). See also, *Twenty-One Sound Communications, Inc.*, 20 FCC Rcd 12497 (EB 2005), Application for Review pending.

<sup>18</sup> *Forfeiture Order* at para. 13. See *Aquila, Inc.*, 19 FCC Rcd 22507 (EB 2004).

<sup>19</sup> 47 U.S.C. § 405.

Radio Network, Inc.'s Petition for Reconsideration, filed July 31, 2006, **IS DENIED**.

14. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>21</sup> Farmworkers Educational Radio Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35 of the Rules.<sup>22</sup>

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>23</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1-A625, Washington, D.C. 20554.<sup>24</sup>

16. **IT IS FURTHER ORDERED** that this *Memorandum Opinion and Order* shall be sent by regular mail and by certified mail, return receipt requested, to Farmworkers Educational Radio Network, Inc., at its address of record, and Anne Thomas Paxson, Esquire, Borsari and Paxson, its counsel of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>20</sup> 47 C.F.R. § 1.106.

<sup>21</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>22</sup> 47 C.F.R. § 11.35.

<sup>23</sup> 47 U.S.C. § 504(a).

<sup>24</sup> *See* 47 C.F.R. § 1.1914.